

**REMARKS**

In response to the Final Office Action mailed November 3, 2003, Applicants respectfully request reconsideration in view of the foregoing amendments and the following remarks. The application is believed to be in condition for allowance.

Claims 1-51 are pending in this application. Claim 28 is allowed. In the Final Office Action, claims 8-9, 14-17, 21, 22, 24, 38-40, 43, 47, 49 and 51 were objected to. Although the basis for the objection to these claims is not explicitly stated in the Office Action, Applicants assume that these claims continue to be objected to as being dependent upon a rejected base claim as stated in the previous Office Action of May 8, 2003. Claims 1-3, 11, 25-27, 29, 30, 44-46, 48 and 50 stand rejected under 35 U.S.C. §103(a) as being obvious over Tavallaei (5,834,856) in view of Bell (5,917,997). Claims 4, 5, 7, 10, 12, 18-20, 23, 28, 31-37, 41 and 42 stand rejected under 35 U.S.C. §103(a) as being obvious over the combination of Tavallaei and Bell in further view of Vert (6,360,331). Applicants respectfully traverse these rejections.

**Claim Rejections Under 35 U.S.C. §112, First Paragraph**

The Office Action rejected claims 6 and 13 under 35 U.S.C. §112, first paragraph, as purportedly lacking enablement in the specification. Applicants disagree with this rejection. However, to further the prosecution of this Application, claims 6 and 13 have been amended to no longer recite an act of replicating data without copying. Accordingly, it is respectfully requested that the rejection of claims 6 and 13 under 35 U.S.C. §112 be withdrawn.

**Rejections Under 35 U.S.C. §103****The Combination of References is Improper**

The Office Action rejected claims 1-3, 11, 25-27, 29, 30, 44-46, 48 and 50 as purportedly being obvious over the combination of Tavallaei and Bell. The Office Action asserts that one skilled in the art would have been motivated to combine Bell with Tavallaei because Tavallaei does not disclose data protection means, and that "by incorporating the data reliability and reconfiguration means of Bell and the hosting and detecting means of Tavallaei, a more reliable business host system can be achieved." (paragraph 1c, page 3 of Office Action).

In the response filed on August 8, 2003, Applicants pointed out that it was not clear whether Bell or Tavallaei was considered to be the primary reference. The Office Action now clarifies that Tavallaei is the primary reference and Bell is the secondary reference. (paragraph 44, page 16 of Office Action). Applicants appreciate this clarification, but continue to believe that the rejection is improper.

In the response filed on August 8, 2003, Applicants argued that one skilled in the art would not have been motivated by Bell to modify Tavallaei to provide the ability to automatically reconfigure a replacement system to replace a failed system.

In response, the Office Action (in paragraph 41 at pages 14-15) makes reference to Applicants' claims not specifically defining the type of electronic commerce system, and then asserting that the type of IP addresses taught in Bell are known to be used on electronic commerce sites. The Office Action further asserts that "Tavallaei teaches of servers with hosts." (paragraph 41). It is respectfully asserted that these statements not only fail to provide any proper motivation for the combination, but actually demonstrate that hindsight has improperly been employed.

First, the reference to what is recited in Applicants' claims as providing any basis for alleged motivation in the prior art of record is improper, as the inquiry under §103 as to what the teachings of the prior art would have taught prior to the date of Applicants' invention must necessarily be done without gleaning anything from Applicants' claims. Thus, referring to Applicants' claims as providing any basis for a motivation to combine Bell and Tavallaei is improper.

Second, the assertions that IP addresses could be used on electronic commerce sites and that Tavallaei teaches a host server simply provide no motivation for the alleged combination. The Office Action fails to allege why one of ordinary skill in the art would have been motivated to modify Tavallaei based upon the teachings of Bell, and further fails to specify what system would allegedly result from the combined teachings.

Paragraph 42 on page 15 of the Office Action asserts that Applicants previously argued that Tavallaei and Bell are non-analogous art. Applicants disagree. While Applicants do not suggest that a non-analogous art argument may lack merit, Applicants never made such an argument. Applicants simply asserted that the teachings of Bell and Tavallaei are so unrelated

that one skilled in the art would not have been motivated to modify Tavallaei based upon the teachings of Bell.

**The Claims Patentably Distinguish Over the Combination**

Even if one were to combine Tavallaei and Bell, the claims distinguish over any such combination. In Applicants' response of August 8, 2003, Applicants noted that if one of ordinary skill in the art were to follow the teachings of Tavallaei and Bell, the result would have been a system in which the network identity of a host may be reassigned to another host in response to an operator executing an OBEYFILE (as taught by Bell), wherein each of the hosts has hot-swappable physical components (as taught by Tavallaei). Consequently, the combination of Tavallaei and Bell would not have resulted in a system which automatically configures a second host computer to host at least a portion of an electronic commerce site on the second host computer in response to an act of detecting. Instead, the system would require manually causing the execution of an OBEYFILE as taught by Bell, because Bell is the only reference of record that teaches reconfiguring one host to take over for another.

In response to this argument, the Office Action asserts that the system resulting from the combination of Tavallaei and Bell would perform automatic failover because Tavallaei discloses that the redundant device can become operational at intervals for amounts of time in order to determine the status of the first device. (paragraph 45, page 17 of Office Action). Applicants respectfully disagree. The system that would have resulted from the combined teachings of Tavallaei and Bell would perform automatic failover of redundant components within a host computer, as disclosed by Tavallaei. However, such a system would not have performed automatic failover to another host. Failover to another host would require an operator manually causing the execution of an OBEYFILE, as disclosed by Bell.

There is no teaching or suggestion in either Tavallaei or Bell that the technique disclosed in Tavallaei for automatically replacing failed components in a computer with redundant components be used to configure the network identify of a second host computer to takeover the network identity of a failed first host computer. As pointed out in Applicants' response of August 8, 2003, combining these two references would be like combining a first reference that discloses an automobile engine with a second reference that discloses automobile brakes. The

resulting combination would be an automobile having the engine disclosed by the first reference and the brakes disclosed by the second reference. Likewise, if one of ordinary skill in the art were to follow the teachings of Tavallaei and Bell, the result would be a system in which the network identity of a host may be reassigned to another host in response to an operator executing an OBEYFILE (as taught by Bell), wherein each of the hosts has hot-swappable physical components (as taught by Tavallaei). Such a system is very different from Applicants' claimed invention.

The Examiner does not specifically respond to this last point, but continues to simply assert that Tavallaei discloses automatic detecting and Bell discloses the switching from one host to another. However, it is respectfully asserted that the Office Action fails to set forth a *prima facie* case of obviousness, as it does not explain why one of ordinary skill in the art would have been motivated to make the further modification to the system of Bell to perform automatic failover from one host system to another. This is simply not taught in either of the prior art references of record, and it is respectfully asserted that the Office Action fails to demonstrate how Tavallaei's teaching of hot swapping a failed component provides a motivation for modifying Bell's technique for performing reconfiguration of host systems, and how such an automatic reconfiguration could be accomplished in view of the fact that no prior art of record teaches automatic reconfiguration of host systems.

### Claim 1

Claim 1 is directed to a method of performing electronic commerce. The method includes acts of hosting an electronic commerce site on a first host computer, detecting a change in operation of the electronic commerce site; and automatically configuring a second host computer to host at least a portion of the electronic commerce site on the second host computer in response to the act of detecting.

Tavallaei and Bell, taken individually or in combination, fail to disclose, teach, or suggest Applicants' invention as recited in claim 1. Initially, Applicants note that neither Tavallaei nor Bell discloses or suggests "hosting an electronic commerce site on a first host computer." The Office Action asserts that Tavallaei discloses hosting an electronic commerce site at column 4, lines 23-32. Applicants respectfully disagree.

Neither Bell or Tavallaei, taken individually or in combination, discloses or suggests "automatically configuring a second host computer to host at least a portion of the electronic commerce site on the second host computer in response to the act of detecting." Tavallaei discloses detecting a non-functioning component on a failed computer and replacing the non-functioning component with a functioning component on **the same computer**. Indeed, in Tavallaei, no other host computers, other than the one in which an individual component may fail, are even discussed. While Bell discloses reassigning the identity of a first host on a network to a second host on the network in case of failure of the first host, the failure of the first host must be detected by a human operator and the human operator must initiate the reassignment of identity by executing an OBEYFILE. Thus, the reassignment of the identity of the first host to the identity of the second host is not performed automatically.

Because Tavallaei and Bell, taken individually or in combination, fail to disclose all of the limitations recited in claim 1, claim 1 patentably distinguishes over Tavallaei and Bell. Accordingly, it is respectfully requested that the rejection of claim 1 under 35 U.S.C. §103(a) be withdrawn.

Claims 2-7, 10-13, 18-20, 23, 25, and 26 depend from claim 1 and patentably distinguish over Tavallaei and Bell for at least the same reasons discussed above in connection with claim 1. Accordingly, it is respectfully requested that the rejection of these claims under 35 U.S.C. §103(a) be withdrawn.

**Claim 27**

Claim 27 is directed to a computer system including a first host computer that hosts an electronic commerce site, a second host computer, and a controller that is operatively coupled to the first host computer and the second host computer. The controller automatically configures the second host computer to host at least a portion of the electronic commerce site on the second host computer in response to a change in operation of the electronic commerce site.

As should be clear from the discussion above, neither Bell nor Tavallaei discloses or suggests "a first host computer that hosts an electronic commerce site," and neither Bell or Tavallaei, taken individually or in combination, discloses or suggests a controller that "automatically configures a second host computer to host at least a portion of the electronic

commerce site on the second host computer in response to a change of operating of the electronic commerce site.”

Thus, claim 27 patentably distinguishes over Tavallaei and Bell. Accordingly, it is respectfully requested that the rejection of claim 27 under 35 U.S.C. §103(a) be withdrawn.

Claims 29-37, 41, 42, and 44 depend from claim 27 and patentably distinguish over Tavallaei and Bell for at least reasons discussed above in connection with claim 27. Accordingly, it is respectfully requested that the rejection of these claims under 35 U.S.C. §103(a) be withdrawn.

**Claim 45**

Claim 45 is directed to a storage system for use with a first host computer and a second host computer. The storage system includes at least one first storage device to store data of the first host computer corresponding to an electronic commerce site hosted by the first host computer, and a controller that is coupled to the at least one first storage device. The controller, when operatively coupled to the first host computer and the second host computer, automatically configures the second host computer to use at least a portion of the data of the first host computer that corresponds to the electronic commerce site to host a portion of the electronic commerce site on the second host computer in response to a change in operation of the electronic commerce site.

As should be clear from the discussion above, claim 45 patentably distinguishes over Tavallaei and Bell, taken individually or in combination, because neither reference discloses or suggests “an electronic commerce site hosted by the first host computer,” nor a controller that, when operatively coupled to the first host computer and the second host computer, “automatically configures the second host computer to use at least a portion of the data of the first host computer that corresponds to the electronic commerce site to host a portion of the electronic commerce site on the second host computer in response to a change in operation of the electronic commerce site.”

Further, neither Tavallaei and Bell, taken individually or in combination, discloses that such automatic configuration is performed by a controller of a storage system. The replacement of non-functional components in a computer, as disclosed by Tavallaei, is performed by the

computer, not by a storage system. Likewise, the re-assignment of the identity of a host, as disclosed by Bell, is performed by an operator. Neither reference discloses a storage system that configures a host in any manner, let alone in the manner recited in claim 45.

In view of the foregoing, claim 45 patentably distinguishes over Tavallaei and Bell. Accordingly, it is respectfully requested that the rejection of claim 45 under 35 U.S.C. §103(a) be withdrawn.

Claims 46, 48, and 50 depend from claim 45 and patentably distinguish over Tavallaei and Bell for at least reasons discussed above in connection with claim 45. Accordingly, it is respectfully requested that the rejection of these claims under 35 U.S.C. §103(a) be withdrawn.

**CONCLUSION**

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to deposit account No. 23/2825.

Respectfully submitted,

*Yao Wang et al., Applicant*

By: Richard F. Giunta

Richard F. Giunta, Reg. No. 36,149  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Avenue  
Boston, MA 02210-2211  
Tel. no. (617) 720-3500  
Attorney for Applicant(s)

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